Uvarajah & Anor v Penolong Pengarah Buruh, Butterworth & Ors

HIGH COURT (PENANG) — ORIGINATING MOTION NO 25-6-90
ABDUL HAMID JC
24 JULY 1991

Labour Law *— Jurisdiction — Claim for overtime wages — Claim made pursuant to collective agreement — Collective agreement taken cognizance of by Industrial Court — Whether Director General of Labour had jurisdiction to hear and determine claim — Employment Act 1955 s 69(1) — Industrial Relations Act 1967 ss 33 & 56*

The applicants had claimed for overtime wages from the second and third respondents pursuant to art 17 of a collective agreement. The Labour Office held an inquiry but before it was completed, the first respondent informed the applicants that the labour officer had no jurisdiction to hear their claims. The applicants did not appeal against the first respondent's decision but they applied to the High Court for a certiorari to quash the first respondent's decision and a mandamus directing the first respondent to hear their claims. The applicants then contended that the first respondent had acted in breach of natural justice in summarily dismissing their claims without giving them the right to make submissions as to whether the labour officer had jurisdiction to hear the matter or not.

Held, dismissing the application:

(1) Since the collective agreement had been taken cognizance of by the Industrial Court, any question as to its interpretation should be referred to the Industrial Court under s 33 of the Industrial Relations Act 1967 ('the 1967 Act'). If there is a complaint that the collective agreement is not complied with, this is also a matter for the Industrial Court under s 56 of the 1967 Act. Accordingly the labour officer had no jurisdiction to determine the applicants' claims.

(2) The question of jurisdiction is purely a matter of law. The first respondent did not act in breach of natural justice in summarily dismissing the applicants' cases as he did. If otherwise no court is entitled to decide on authorities not cited to it unless counsel for the respective parties are given a chance to submit on their authorities.

[Bahasa Malaysia summary

Pemohon telah menuntut gaji bagi bekerja lebih masa daripada responden kedua dan ketiga sesuai dengan perkara 17 perjanjian kolektif. Jabatan Buruh telah menjalankan satu siasatan tetapi sebelum siasatan itu diselesaikan, responden pertama memberitahu pemohon bahawa

pegawai buruh tidak mempunyai bidang kuasa untuk membicarakan tuntutan mereka. Pemohon tidak merayu terhadap keputusan responden pertama tetapi telah memohan kepada Mahkamah Tinggi untuk mendapati certiorari membatalkan keputusan responden pertama dan mandamus mengarahkan responden pertama untuk membicarakan tuntutan mereka. Pemohon kemudian berhujah bahawa responden pertama telah melakukan perlanggaran keadilan asasi dengan menolak secara terus tuntutan mereka tanpa memberi mereka hak membuat penghujahan sama ada pegawai buruh mempunyai bidang kuasa untuk membicarakan perkara itu atau tidak.

Diputuskan, menolak permohonan itu:

(1) Kerana perjanjian kolektif itu telah diberi kognisans oleh Mahkamah Perusahaan, sebarang soalan mengenai tafsirannya harus dirujukkan kepada Mahkamah Perusahaan di bawah s 33 Akta Perhubungan Perusahaan 1967 ('Akta 1967 itu'). Jika terdapat sesuatu aduan bahawa perjanjian kolektif itu tidak dipatuhi, ini juga adalah satu perkara bagi Mahkamah Perusahaan di bawah s 56 Akta 1967 itu. Oleh kerana itu pegawai buruh tidak mempunyai bidang kuasa untuk memutuskan tuntutan pemohon.

(2) Soalan bidang kuasa adalah semata-mata satu perkara undang-undang. Responden pertama tidak melakukan perlanggaran keadilan asasi dengan menolak secara terus kes pemohon sebagaimana yang telah ia lakukan. Jika sebaliknya tiada mahkamah berhak memutuskan atas autoriti yang tidak dirujuk kepadanya kecuali peguam bagi pihak masing-masing diberi peluang untuk mengemukakan autoriti mereka.]

Cases referred to

1 *Securicor Malaysia Sdn Bhd v Mohd Lazi bin Katan* [1989] 3 MLJ 243 (folld)
2 *Government of Malaysia & Anor v Jagdis Singh* [1987] 2 MLJ 185 (folld)
3 *Nylex (M) Sdn Bhd v Alias bin Chek* [1985] 1 CLJ 185 (distd)
4 *Rajaretnam a/l Palaniandy v Amalgamated Properties and Industries* [1988] 2 MLJ 363 (distd)

Legislation referred to

Employment Act 1955 s 69(1)
Industrial Relations Act 1967 ss 17, 33, 56

Mohideen Abdul Kader (*Mohideen & Asamaley*) for the appellants.

Muhamad Ideres bin Muhamad Rapee (Senior Federal Counsel) for the first respondent.

TM Varughese (*TM Varughese & Co*) for the second and third respondents.

Abdul Hamid JC: The applicants applied for an order of certiorari to remove into this court and to quash the decision of penolong pengarah buruh, Butterworth dated 21 August 1989 and for an order of mandamus to direct him to hear and determine the two labour cases viz BW KB 219/86 and BW KB 222/87.

The applicants had claimed for overtime wages pursuant to art 17 of the collective agreement entered into between the first and second respondents on the one part and the Food Industries Employee Union on the other part.

Article 17 of the said agreement provides:

> Article 17 — Overtime
>
> (a) Overtime is work performed at the prior request of the company outside the normal working hours applicable to the employees concerned and with the consent of the employee but such consent shall not be unreasonably withheld.
> (b) Employees working on such overtime shall be paid at one and a half (1½) times the hourly rate of pay.
> (c) Normal hourly rate shall be in accordance with the Employment Act.

Article 7 of the said agreement provides:

> Article 7 — Arbitration
>
> Any dispute relating to the interpretation or implementation of this agreement shall unless settled by negotiation may be referred for arbitration in accordance with the provisions of the Industrial Relations Act 1967 or such other law as may be in force.

The claims were made at the Labour Office, Butterworth. A senior labour officer held an inquiry in which he 'recorded most of the evidence... and part of the submissions the continuation of which was scheduled on 5 October 1989'.

However, by a letter dated 21 August 1989, the first respondent informed the applicants' solicitors that the two cases were cancelled and requested them to pursue the claims in the Industrial Court if they so desired. He stated that the decision was based on *Securicor Malaysia Sdn Bhd v Mohd Lazi bin Katan.*[1] In other words he was of the view that the decision of the High Court at Johore Bahru was binding on him and a labour officer had no jurisdiction to hear the case.

The first point is whether judicial review is available where there is a right of appeal against the decision and no appeal is lodged. A number of authorities were cited to me. However, I am of the view that it is sufficient for me to refer only to the Supreme Court decision in *Government of Malaysia & Anor v Jagdis Singh.*[2] In that case, Hashim Yeop A Sani SCJ (as he then was), who delivered the judgment of the court, having referred to a number of authorities, said at p 189:

> A clear principle is reiterated here ie it is not a rigid rule that whenever there is an appeal procedure available to the applicant he should be denied judicial

review. Judicial review is always at the discretion of the court but where there is another avenue or remedy open to the applicant it will only be exercised in very exceptional circumstances.

In Re Preston [1985] 2 All ER 327 was a tax case. It was quite clear from the speeches of their Lordships in the House of Lords that the Inland Revenue commissioners were not immune from the process of judicial review. But what was also made clear is that remedy by way of judicial review is not to be available where an alternative remedy exists *except in very exceptional cases.*

In answer to the first question we would therefore hold that the discretion is still with the courts but where there is an appeal provision available to the applicant certiorari should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice.

So, the question is whether there is such a case.

Encik Mohideen, counsel for the applicants, argued that the labour officer was wrong in saying that he had no jurisdiction to hear and determine the two cases. In other words, the labour officer was wrong when he thought that he was bound by the decision of Abu Mansor J in *Securicor*[1] because that case was wrongly decided. Instead, according to Encik Mohideen, the labour officer should have followed *Nylex (M) Sdn Bhd v Alias bin Chek*[3] and *Rajaretnam a/l Palaniandy v Amalgamated Properties and Industries.*[4]

In *Nylex*[3] the respondent, an employee of the applicant, filed a complaint with the Labour Office, Klang that his services had been terminated by the applicant without notice and claimed indemnity in lieu of notice and termination benefits. After considering the provisions of s 69 of the Employment Act 1955, Harun Hashim J (as he then was) held that 'the powers of the Director General (including an assistant director) under s 69(1) are limited to matters concerning wages only'. The learned judge therefore held that in the circumstances of that case, the assistant director had no jurisdiction to hold an inquiry under s 69(1) of the Act.

Rajaretnam[4] is a Supreme Court decision. Again the question was whether a labour officer may hold an inquiry under s 69 of the Act where the dispute was whether the dismissal was without just cause or excuse. The Supreme Court agreed with the judgment of Harun Hashim J (as he then was) in *Nylex*[3] and dismissed the appeal. That was in 1988.

In 1989, Abu Mansor J delivered his judgment in the *Securicor* case.[1]

It should be noted that in *Securicor*[1] the respondent who was found to have committed a serious misconduct was dismissed by the appellant pursuant to a disciplinary action. The respondent lodged a complaint to the Kluang Labour Office under s 69(1) of the Act. After an inquiry, the labour officer made an order for arrears of pay in the sum of $485.

Before the learned judge, it was argued, firstly, that the labour officer had no jurisdiction to hold the inquiry as the complaint arose from a dismissal for misconduct. The learned judge held that he was bound by *Rajaretnam*[4] *only if* the inquiry held by the labour officer was for the specific purpose of determining the validity of the dismissal. He held, however, that even

A though the complaint arose as a result of a dismissal, the order made by the labour officer was only in respect of arrears of wages.

It is not for me to say whether the learned judge, on the facts of that case, had come to a correct decision or not, indeed it is not necessary for me to comment. What is clear is that the learned judge held himself bound by the Supreme Court decision that a labour officer *has* jurisdiction to hold an B inquiry where the dispute is over wages only, but not where it involves the validity of a dismissal.

In that sense, in my view it cannot be said that that judgment is contrary to the Supreme Court judgment in *Rajaretnam*[4] or for that matter the High Court decision in *Nylex*.[3]

C Perhaps, it should be noted here that in this case the claim is for wages only (overtime).

We now come to the second part of the judgment of Abu Mansor J in *Securicor*.[1] It was argued by counsel for the appellant in that case that the 'Director of Labour' had no jurisdiction to make the order which he did because it contravened the provisions of s 33 of the Industrial Relations Act D 1967 as the order was made under Award 50 and it involved an interpretation of an award under s 33 and non-compliance with an award under s 56 of the Industrial Relations Act 1967.

This question did not arise in either *Nylex*[3] or *Rajaretnam*.[4] So, in my view, it cannot be said that the learned judge's decision on this point is E inconsistent with the said two judgments.

I agree with the view of the learned judge in *Securicor*[1] on this point.

In this case, the claim, though no doubt for wages, was made pursuant to art 17 of the collective agreement. It was not disputed that the collective agreement had been taken cognizance of by the Industrial Court. By virtue of s 17 of the Act it is deemed to be an award. That being so, where a F question arises as to its interpretation, the matter should be referred to the Industrial Court — s 33. If there is a complaint that any of its terms is not complied with, again that is a matter for the Industrial Court — s 56.

For the above reasons I agree with Abu Mansor J in *Securicor*'s case[1] that a labour officer has no jurisdiction to determine a claim, though for wages G only, where it involves the interpretation or compliance with an award, or a collective agreement which is deemed to be an award. I am also of the view that this view is not inconsistent with the view expressed by the Supreme Court in *Rajaretnam*[4] or by the High Court in *Nylex*,[3] as this point did not arise in those cases and was not decided therein.

I am therefore of the view that the first respondent did not commit any H jurisdictional error by refusing to continue to hear and determine the two cases. This ground fails.

The second ground which was put forward by counsel for the applicant was that the first respondent had acted in breach of natural justice in summarily 'cancelling' the case without giving the parties the right to make I a submission whether he had jurisdiction to hear and determine the cases or not, whether *Securicor*[1] was correctly decided and whether *Securicor*[1] was contrary to *Nylex*[3] and *Rajaretnam*.[4] With respect, I do not think there is any

merit in this argument. It is purely a matter of law. To agree with that proposition would mean that no court is entitled to decide on authorities not cited to it unless counsel for the respective parties are given a chance to make their submissions regarding the authorities. I do not think that the right to be heard goes that far.

In the circumstances of this case and on the principles stated by the Supreme Court in *Jagdis Singh*'s case,[2] in my judgment, this is not a proper case where the court should exercise its discretion to issue a writ of certiorari and mandamus. The application is dismissed with costs.

Application dismissed.

Reported by Wong Kian Kheong